APPENDIX A

IN THE
SUPREME COURT OF THE STATE OF LOUISIANA
No. 81-K-2706

STATE OF LOUISIANA,
Plaintiff-Appellee

versus

CHARLES F. WALGAMOTTE,
Defendant-Appellant

ON APPEAL FROM THE TWENTY-NINTH JUDICIAL DISTRICT COURT FOR THE PARISH OF ST. JOHN THE BAPTIST, STATE OF LOUISIANA, NO. 29,284, THE HONORABLE RUCHE J. MARINO, JUDGE PRESIDING

ORIGINAL BRIEF ON THE MERITS ON BEHALF OF THE STATE OF LOUISIANA, PLAINTIFF-APPELLEE

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Defendant-Appellant

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ORIGINAL BRIEF ON THE MERITS ON BEHALF OF THE STATE OF LOUISIANA, PLAINTIFF-APPELLEE

STATEMENT OF THE CASE

Charles F. Walgamotte was 15 years old when he was charged on August 17, 1973 with the first-degree murder of Mrs. Rita V. Vicknair by a grand jury indictment (R-6). After a series of events, including numerous pre-trial hearings, plea bargaining, writ applications, a guilty plea, withdrawal of the same, and resetting for trial, he filed a Motion to Quash the indictment on grounds of statute limitations, which was denied by the trial court on March 27, 1981. The Louisiana Supreme Court granted his writ application for review on November 27, 1981 (R-189). At present, relator-defendant is in St. John the Baptist Parish Jail, awaiting trial for the crime of first-degree murder.

FACTS

1.	July 9, 1973	Mrs. Rita V. Vicknair murdered (R-6).
2.	August 17, 1973	Charles F. Walgamotte, age 15, indicted for first-degree murder of Mrs. Rita V. Vicknair (R-6).
3.	August 27, 1973	Walgamotte entered plea of "not guilty and not guilty by reason of insanity" (R-8) with counsel.
4.	September 17, 1973	Walgamotte's counsel moved for appointment of Sanity Commission (R-10).
5.	September 24, 1973	Sanity Commission appointed (R-12).
6.	October 25, 1973	Sanity Commission given extension of time in which to report (R-22).
7.	November 21, 1973	Sanity Commission reports Walgamotte knowledgeable of right from wrong (R-23).
8.	January 9, 1974	Sanity hearing held and Walgamotte found capable of standing trial (R-26).
9.	May 31, 1974	Indictment reduced to second-degree murder, pursuant to plea bargain (R-26).
10.	June 6, 1974	Walgamotte, with counsel, pleads guilty to second-degree murder and sentenced to serve life imprisonment (R-27; *See also* R-32 et seq.)
11.	March 31, 1975	Walgamotte filed Writ of Habeas Corpus, alleging trial court had no jurisdiction once indictment was reduced.
12.	April 14, 1975	Hearing held in trial court. Guilty plea set aside. Remanded for trial on first-degree murder (R-65).

13.	June 17, 1975	Louisiana Supreme Court grants evidentiary hearing (R-49).
14.	June 18, 1975	Hearing set for July 14, 1975 (R-51).
15.	July 14, 1975	Walgamotte filed Motion to Recuse Judge (R-68). Granted. Transferred to Judge Bradley (R-69). Ruling at R-140 (following transcript of hearing which starts at R-94) finds confession was voluntary.
16.	April 30, 1976	Louisiana Supreme Court denies a writ application (No. 57,838). (Writ Application and grounds raised not in record) (R-76).
17.	March 7, 1980	Writ filed in trial court (R-144).
18.	May 12, 1980	Writ Application denied in trial court (R-77) with reasons at R-78, et seq., citing "successive application which fails to allege a new claim."
19.	February 13, 1981	Writ denied (Louisiana Supreme Court No. 80-K-1488) ordering Walgamotte to stand trial for first-degree murder (R-167).
20.	March 24, 1981	Letter from Louisiana Supreme Court querying disposition of habeas petitions in trial court (R-173).
21.	March 27, 1981	Writ denied in trial court (R-175).
22.	April 17, 1981	Writ denied in Louisiana Supreme Court (No. 81-KH-0792) as "moot."
23.	June 12, 1981	Trial set for October 14, 1981 (R-181)
24.	July 30, 1981	Motion to Quash filed by Walgamotte.

25.	September 14, 1981	Hearing held in trial court. Motion to Quash denied.
26.	November 27, 1981	Writ granted by Louisiana Supreme Court (No. 81-K-2706).
27.	December 15, 1981	Record lodged in Louisiana Supreme Court.
28.	January 15, 1982	Supplement Record lodged in Louisiana Supreme Court.
29.	January 15, 1982	Brief filed by Walgamotte's attorney, alleging statute of limilations were not interrupted.

LAW AND ARGUMENT

Walgamotte had his sentence for second-degree murder set aside on April 14, 1975. He was remanded for trial on first-degree murder on that same day.

A motion to Quash was filed on July 30, 1981. It was denied in trial court on September 14, 1981. A writ was granted by this Court on November 27, 1981. Briefing schedule concluded on February 20, 1982.

The State submits the clock began to run in this matter on April 14, 1975. Barring suspension of time running pursuant to C. Cr. P. Art. 580 and interruptions pursuant to C. Cr. P. Art. 579, trial should have been commenced by April 14, 1978. C. Cr. P. Art. 578. However, interruptions beyond the control of the State under C. Cr. P. Art. 579 did take place, causing the limitations of C. Cr. P. Art. 578 (three years) to commence to run anew. Specifically, an evidentiary hearing was ordered by this Court on June 17, 1975. A Motion to Recuse the Judge was filed on July 14, 1975. Writ applications denied by Louisiana Supreme Court on April 30, 1976 and April 17, 1981 further suspends time for commencement of trial. In view of the approxi-

mately five year period of suspension of time, the State submits the present setting for October 14, 1981 was timely.

FOR THE FOREGOING REASONS, the State submits the writ was improvidently granted and should be vacated and the case remanded for trial.

RESPECTFULLY SUBMITTED,

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PARISH OF ST. JOHN THE BAPTIST
STATE OF LOUISIANA

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APPENDIX B

STATE of Louisiana
v.
Charles F. WALGAMOTTE.
No. 81-K-2706
Supreme Court of Louisiana.
May 17, 1982
Rehearing Denied July 2, 1982

CALOGERO, Justice

Charles F. Walgamotte was fifteen years old when on July 9, 1973 he allegedly participated in committing a first degree murder upon the female co-owner of an auto parts store in Reserve, Louisiana. The state attempts to continue this capital prosecution originally instituted by grand jury indictment on August 17, 1973.1/

Defendant contends that prosecution at this late date is barred by C.Cr.P. art. 578 which provides essentially that no trial shall be commenced in capital cases after three years from the date of institution of the prosecution.2/

1/ The defendant has been incarcerated continuously since his arrest on July 9, 1973: eleven months in the St. John the Baptist Parish jail and seven years in the Louisiana State Penitentiary at Angola, excluding three months in 1975 when he was temporarily back in St John the Baptist Parish for post conviction hearings.

2/ C.Cr.P. art. 578 reads as follows:
Except as otherwise provided in this Chapter, no trial shall be commenced:
(1) In capital cases after three years from the date of institution of the prosecution;
(2) In other felony cases after two years from the date of institution of the prosecution; and
(3) In misdemeanor cases after one year from the date of institution of the prosecution.
The offense charged shall determine the applicable limitation.

He further contends that there has been no interruption of the three year limitation as required by Article 579(2) 3/

We granted writs upon defendant's application following a trial court ruling on September 14, 1981 denying his motion to quash.

For the reasons which follow, principally because the state inexcusably neglected to commence trial for a period in excess of three years uninterrupted by any cause specified in Article 579 of the Code of Criminal Procedure, we reverse the ruling of the trial court and order defendant released. Assuming that the limitation period on commencing trial was interrupted between the August 17, 1973 indictment and April 30, 1976, the date of this Court's denial of his writ application (No. 57,838), and between March 7, 1980 and the present time, there was nonetheless a period in excess of forty-six months (April 30, 1976 through March 7, 1980) during which the state could and should have commenced trial, a period not interrupted by any of the causes outlined in C.Cr.P. art 579. As will be seen hereinafter, there was no action taken to bring the defendant to trial between the April 30, 1976 writ denial and the March 7, 1980 filing of defendant's habeas petition in the district court.

3/ C.Cr.P. art 579 reads as follows:

The period of limitation established by Article 578 shall be interrupted if:

(1) The defendant at any time, with the purpose to avoid detection, apprehension, or prosecution, flees from the state, outside the state, or is absent from his usual place of abode within the state; or

(2) The defendant cannot be tried because of insanity or because his presence for trial cannot be obtained by legal process, or for any other cause beyond the control of the state

The periods of limitation established by Article 578 shall commence to run anew from the date the cause of interruption no longer exists.

This case has had a long and tortuous procedural history which we will attempt here to trace.

The crime with which defendant is charged occurred on July 9, 1973. He was indicted on August 17, 1973 and brought on for arraignment on August 27, 1973, at which time he pleaded not guilty by reason of insanity. A sanity commission was appointed to examine the defendant. At the sanity hearing on January 9, 1974, the court found that Charles Walgamotte was sane at the time the crime was committed and was capable of standing trial.

On May 31, 1974, represented by appointed counsel, Charles Walgamotte and his brother Frank entered a plea bargain with the state. The state assented, and defendant and his brother each entered unqualified guilty pleas to second degree murder, and they were sentenced by the trial judge to life imprisonment at hard labor without benefit of parole, probation or suspension of sentence for twenty years.

On January 20, 1975, this Court decided a case pertinent to Charles Walgamotte's situation: *State ex rel. Moore v. Warden of Louisiana St. Pen. at DeQuincey*, 308 So.2d 749 (La. 1975) wherein we found that under the then prevalent provision of the Louisiana Constitution and La.R.S. 13: 1570, the district court did not have jurisdiction to accept a plea of guilty and impose sentence upon a fifteen year old for second degree murder, a non-capital offense. Moore's plea and sentence was set aside and he was remanded to the district court for further proceedings. 4/ *Supra* at 752.

4/ Since our *Moore* decision, the law relative to juvenile crimes and jurisdictions has been changed. *See generally: State v. Lecour*, 398 So.2d 1129 (La. 1981); *State ex rel Johnson*, 384 So.2d 402 (La. 1980); *State v. Sheppard*, 371 So.2d 1135 (La. 1979); *State ex rel Davis*, 368 So.2d 1092 (La. 1979); *State ex rel Coco*, 363 So.2d 207 (La. 1978). Under the most recent constitutional changes the Legis-

On March 31, 1975 defendant, through his attorney, filed a petition in the district court requesting that a writ of habeas corpus be issued because he was being unlawfully detained at the Louisiana State Penitentiary at Angola. The petition declared that the defendant had been fifteen years old when charged. Under La. R.S. 13:1570(5) the district court had lost jurisdiction when the guilty plea to second degree murder was entered and therefore the defendant should be released from Angola and placed in the custody of proper juvenile authorities.

On April 14, 1975 in response to that petition the trial judge vacated the guilty plea to second degree murder, and remanded Walgamotte to the parish prison of St. John the Baptist to await trial on the first degree murder charge rather than placing him in the custody of juvenile authorities.

On May 14, 1975 defendant through counsel filed a writ application in this Court (State v. Charles Walgamotte No. 56304 on the docket of this Court). Essentially he contended that because on May 31, 1974 the adult district court was without jurisdiction to take a plea to second degree murder as relates to a fifteen year old juvenile, and because the district judge in the parish of St. John the Baptist was both the adult and juvenile judge, the entry of guilty plea to second degree murder should have been permitted to stand, and defendant should therefore have been sentenced as a juvenile for the crime of second degree murder. Had he been sentenced as a juvenile, he would have been confined in a

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4/ Continued
lature is invested with a greater role. La.Const.Art. V §18 and §10 Furthermore by Acts 1975, No. 337 §1, the Legislature amended La. R.S. 13:1570 to provide for the district court's retaining jurisdiction over a juvenile defendant who, when charged with the greater crime which confers district court jurisdiction, pleads guilty to a lesser included offense.

juvenile facility only to age twenty-one. Accordingly, he complained of the trial court's ruling of April 14, 1975 upsetting the guilty plea and remanding him to the sheriff for trial for first degree murder in the adult district court.

To entertain defendant's contention that he was due juvenile punishment for his second degree murder plea, and that, in light of the state's accepting a plea to second degree murder, prosecution anew for first degree murder was impermissible, this Court on June 17, 1975 granted the writ in part and ordered the trial court "to conduct an evidentiary hearing to determine the nature, content and effect of the plea bargain agreement. Other proceedings stayed pending that hearing."

In response to that action by this Court the trial judge, on June 19th, set an evidentiary hearing for July 14, 1975. On that day, on motion of counsel for the defendant, Judge Marino recused himself because he was to be called to testify about the circumstances surrounding the earlier plea. The hearing was thereafter conducted by Judge Bradley.

At that hearing, there was some disagreement about whether the defendant had been promised he might serve his time at DeQuincy rather than Angola. Nevertheless it was evident that he entered his plea to second degree murder with the punishment to be life imprisonment at hard labor, in order to avoid exposure to the death penalty. There was clearly no deal or understanding that he would be treated as a juvenile upon entering the second degree murder plea. At the conclusion of the hearing, Judge Bradley ordered that the evidentiary hearing be transcribed and placed at the disposal of the Court for its study. He went on to recite that because this Court may have expected him to make a ruling at the conclusion of the evidentiary hearing, he would do so. And he ruled that the plea of May 31, 1974 was voluntary.

The transcript of that July 14, 1975 hearing was filed in this Court on September 5, 1975. Defendant, who had been returned from Angola on April 10, 1975 for the purpose of the evidentiary hearing, was returned to Angola on July 29, 1975.

Then on April 9, 1976, in proceedings No. 57838 on the docket of this Court, defendant through counsel applied here again contending that inasmuch as the hearing had been conducted pursuant to our order of June 17, 1975, to probe into the circumstances surrounding the entry of the guilty plea of May 31, 1974, this Court should rule on the substance of his contentions (those contained in his March 31, 1975 district court habeas petition and his writ No. 56804; in this Court). Therein he had claimed as we have already noted that he should not have been remanded to the sheriff for trial on first degree murder, but should either have been released or permitted to have the second degree murder plea maintained, with juvenile punishment imposed.

This Court on April 30, 1976 denied the writ observing that relator was not entitled to any such relief. Justice Dixon concurred in the denial being of the opinion that the applicant "cannot receive a more serious sentence than that previously imposed." As was the custom of this Court at that time, due notice of the action on the writ was sent to the proper parties and authorities involved and to the lower court. Inasmuch as the ruling under consideration was the trial judge's vacating and remanding for trial on first degree murder, this Court's denial placed the case in the posture of being ready for trial on the first degree murder indictment.

No further action was taken on this case in the district court or in this Court for more than three years during which time defendant has been in Angola without an out-

standing conviction. Thereafter the following took place:

On March 7, 1980 Wolgamotte, apparently mistaken about the status of his case, filed a pro se writ application in the district court to have the original plea vacated and to be released from confinement since by then he was twenty-one years old. Judge Marino dismissed defendant's habeas petition on May 12, 1980 as "being res judicata in being fully litigated" (sic). No. 80-K-1488 on this Court's docket, a pro se writ application by defendant, was filed on July 1, 1980 complaining of Judge Marino's dismissal and seeking to have the original plea vacated. On February 13, 1981 this Court denied the application with the following language:

> By this application relator seeks to have his guilty plea to and the resultant conviction for second degree murder vacated. The application is denied because the request is moot. Information supplied this Court indicates that on April 14, 1975, the trial judge ordered the guilty plea withdrawn and relator remanded to parish prison to await trial for first degree murder. The stay order granted applicant by this Court on June 17, 1975, in connection with an earlier application by this relator coincident with our ordering the trial court to conduct an evidentiary hearing regarding relator's guilty plea, is no longer in effect.

The Chief Justice concurred: "It appears that relator is in Angola under a sentence vacated six years ago and there are no charges against him."

Thereafter defendant filed a pro se habeas petition in the district court on February 19, 1981 seeking relief and citing

the language employed in the writ denial in No. 80-K-1488 and the Chief Justice's concurring language.

One month later, without the trial judge's having ruled on his March 19, 1981 filing in that court, Walgamotte filed a pro se habeas application in this Court (March 28, 1981, No. 81-KH-0792) to have us require the district court to rule. On April 17, 1981 having learned that the court had taken action on March 27, 1981, concerning defendant's February 19, 1981 filing, we denied the writ as moot. The trial court had dismissed the application "as it pertains to release" and had ordered that "the defendant be transported and held without bond for trial of First Degree Murder." Counsel was appointed on June 9, 1981 (coincidentally, the same lawyer who had been appointed to represent him shortly after his 1973 indictment 5/ and the case set for trial on October 14, 1981.

On July 30, 1981 defendant's attorney Caire filed a motion to quash the indictment complaining that there had been an uninterrupted three year delay following indictment without the state's having brought defendant on for trial. Alternatively, the defendant argued in the motion to quash that his being fifteen at the time he pleaded guilty to second degree murder placed him under the juvenile laws of the state. The juvenile laws provide for release at age twenty-one. Since defendant was then twenty-three years old, he should be released.

On September 18, 1981, the trial court denied the motion to quash, finding, on the one hand, that the defendant was

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5/ It appears from the record that attorney Caire's initial representation of the defendant was for the period from arraignment on August 27, 1973 through sentencing on May 31, 1974. Attorney James Woods represented Walgamotte in the proceedings relative to writ applications from May 14, 1975 through April 20, 1976. From March 8, 1980 through June 9, 1981, Walgamotte acted on his own behalf through pro se filings in the district court and in this Court.

not under the authority of the juvenile courts and, on the other, that the time limitations had been interrupted by the defendant's actions in filing the various writ applications. The judge also alluded to principles of estoppel. 6/

On November 27, 1981 we granted defendant's writ application to review the denial of the defendant's motion to quash. We turn now to consideration of the substance of relator's complaint.

The prosecution of Charles Walgamotte for his part in the crime of first degree murder was properly instituted by grand jury indictment signed a "true bill" on August 17, 1973. The history of that prosecution, recited hereinabove, reveals that defendant pled guilty to second degree murder in the district court for the parish of St. John the Baptist on May 31, 1974 with the consent of the district attorney. C.Cr.P. art. 558; *State v. Green*, 263 La. 837, 269 So.2d 460 (1972). The district attorney acquiesced in the plea, as permitted by C.Cr.P. art. 487. *State v. Green, supra.* There was no formal amendment of the 1973 indictment. When the district judge vacated the defendant's guilty plea to second degree murder after the hearing held on April 14, 1975, the 1973

6/ The trial judge stated from the bench:
This Court is of the opinion that in reference to Article Number One, Article 578.1, the capital case, stating that three years of prosecution, this Court is of the opinion that when this particular matter was set for trial on the first degree murder case is that counsel for the defendant and the defendant sought another remedy of which the remedy was by writ or by the appellate process of the Supreme Court, and at this particular time, this Court finds that the prescription was either suspended or interrupted, and really at the most is that equitable estoppel would work in this particular regard in that the State was at the particular time waiting for the Supreme Court to make whatever decision that they should have made in reference to this particular matter (sic).

indictment was still outstanding and formed the basis for the trial judge's remanding Walgamotte to the St. John the Baptist Parish prison on that day to await trial for first degree murder.

The proceedings which took place thereafter, culminating in the writ denial by this Court on April 30, 1976, did serve to suspend the running of the time limitations for commencement of trial. Those proceedings included a stay of proceedings on June 17, 1975, an evidentiary hearing on July 14, 1975, the transmission to this Court of the transcript to this Court on September 5, 1975 and writ application of April 9, 1976. These interrupting legal skirmishes concluded on April 30, 1976 when we denied defendant's application and upheld the trial judge's ruling of April 14, 1975 wherein the trial judge had ordered the defendant held over for trial as an adult on first degree murder. The district attorney of St. John the Baptist Parish had from that point three years in which to bring Charles Walgamotte to trial as an adult on the first degree murder charge. 1/ That trial should therefore have been commenced on or before April 30, 1979. Any effort by the defendant after April 30, 1979 to secure his release from confinement, which he had reason to believe was illegal, has no bearing on the time limitations which had already expired and the legal effect thereof. Therefore the state's contention that the defendant's April 27, 1981 writ application had served to interrupt the time available for commencing trial is without merit.

A motion to quash the indictment is the proper procedural vehicle for challenging an untimely commencement of trial. C.Cr.P. art. 581 and C.Cr.P. art. 532(7). For a capital offense, trial must begin within three years of the date of the institution of the prosecution. C.Cr.P. art. 578)1). As noted in the

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1/ We note that the present district attorney for St. John the Baptist Parish did not take office until January 1, 1979.

official comment (a) to this codal provision, Louisiana allows the state a considerably longer time period in which to begin trial than do other states.

In *State v. Theard,* 212 La. 1022, 34 So.2d 248 (1948) quoting *State v. Theard,* 203 La. 1026, 14 So.2d 824 at 825 (1943) we consider the purpose of statutory requirements of dismissal when legislatively mandated time limitations have elapsed. They are:

> to enforce the right of an accused to a speedy trial and to prevent the oppression of citizens by suspending criminal prosecutions over them for an indefinite time *as well as to prevent delays in the administration of justice by imposing on judicial tribunals an obligation of proceeding with reasonable dispatch in the trial of criminal accusations.* (Emphasis added.)

More recently, in *State v. Alfred,* 337 So.2d 1049 (La. 1976) (On rehearing) we noted specifically at 1055-1056:

> . . . in a capital case Article 578 of the Code of Criminal Procedure allows a delay of three years from the date of institution of the prosecution within which the trial may be commenced. Such an enactment is a recognition by the legislature that the time limitation thereby ordained is reasonable and acceptable under ordinary circumstances. Statutes of limitation are the primary guarantees against inordinate delays between accusation and trial. La.Code Crim. Pro. arts. 578-82; 18 U.S.C.A. §§3281-82; *United States v. Ewell,* 383 U.S. 116, 86 S. Ct. 773, 15 L.Ed.2d 627 (1966);

State v. Howard, 325 So.2d 812 (La. 1976); *State v. Stetson*, 317 So.2d 172 (La.1975); *State v. Gladden*, 260 La. 735, 257 So.2d 388 (1972). These statutes represent a legislative assessment of relative interests of the State and defendant in administering and receiving justice, and they should be considered by the courts. *United States v. Marion*, 404 U.S. 307, 92 S.Ct. 455, 30 L.Ed.2d 468 (1971); *State v. Theard*, 203 La. 1026, 14 So.2d 824 (1943).

The Code of Criminal Procedure does however allow for the interruption of time limitations in the instances enumerated in C.Cr.P. art. 579. C.Cr.P. art. 579(2) on which the state relies provides in pertinent part for the interruption of time limitations if:

> (2) The defendant cannot be tried . . . for any other cause beyond the control of the state.

However the State bears the burden of proving that it was beyond its control to try the defendant within the statutory time delays. *State v. Devito*, 391 So.2d 813 (La. 1980) (On rehearing).

The state has not borne its burden of showing that commencing the trial of Charles Walgamotte for first degree murder within three years after April 30, 1976 was beyond their control. The defendant was within reach of the state, either in the custody of the sheriff of St John the Baptist Parish or of the warden at Louisiana State Penitentiary at Angola. There was nothing preventing the state from compelling his presence for trial, as they eventually did in 1981. The state failed to begin trial within three years under La. C.Cr.P. 578.

Decree

The district court's denial of defendant's motion to quash is therefore reversed. The motion is granted.

DISTRICT COURT RULING REVERSED; MOTION TO QUASH GRANTED.

APPENDIX C

SUPREME COURT OF LOUISIANA

New Orleans, 70112

FROM: CLERK OF SUPREME COURT OF LOUISIANA

On the 2nd day of July, 1982, the following action was taken by the Supreme Court of Louisiana, composed of Chief Justice John A. Dixon, Jr., and Associate Justices Pascal F. Calogero, Jr., Walter F. Marcus, Jr., James L. Dennis, Fred A. Blanche, Jr., Jack Crozier Watson, and Harry T. Lemmon, in the case listed below:

REHEARING DENIED:

81-KA-2706 State v. Charles F. Walgamotte (St. John the Baptist Parish) LEMMON, J., would grant a rehearing.

APPENDIX D

IN THE
SUPREME COURT
OF THE
STATE OF LOUISIANA

NO:81-K-2706

STATE OF LOUISIANA,
PLAINTIFF-APPELLEE

VERSUS

CHARLES F. WALGAMOTTE,
DEFENDANT-APPELLANT

ON APPEAL FROM THE TWENTY-NINTH JUDICIAL DISTRICT COURT FOR THE PARISH OF ST. JOHN THE BAPTIST, STATE OF LOUISIANA, NO. 29,284, THE HONORABLE RUCHE J. MARINO, JUDGE PRESIDING

MOTION AND ORDER FOR STAY OF MANDATE

MAY IT PLEASE THE COURT:

NOW COMES, the State of Louisiana, through District Attorney Harry Morel and Assistant District Attorney, Abbott J. Reeves, and with respect moves this Court for a stay of mandate issued on July 2, 1982 by this Court which ordered the defendant-appellant discharged.

Charles F. Walgamotte was 15 years old when he was charged on August 17, 1973 with the first-degree murder

of Mrs. Rita V. Vicknair by a grand jury indictment. After a series of hearings, plea bargaining, writ applications, a guilty plea, withdrawal of the same, and resetting for trial, he filed a Motion to Quash the indictment on grounds of statute of limitations, which was denied by the trial court on March 27, 1981. The Louisiana Supreme Court granted his writ application for review on November 27, 1981, despite having ordered a new trial in February, 1981. (80-K-1488).

The original opinion was rendered on May 17, 1982 by a 6–1 vote, Associate Justice Harry Lemmon dissenting. Application for Rehearing was denied on July 2, 1982.

The State seeks a 90 day stay of mandate pending application for writ of certiorari in the United States Supreme Court, Washington, D. C.

GROUNDS FOR GRANTING THE STAY OF MANDATE

The defendant committed a most brutal crime, having murdered Mrs. Rita V. Vicknair on July 9, 1973. He entered a plea of not guilty and not guilty by reason of insanity. It was only on a technicality ("Juvenile Court v. District Court", re: jurisdiction when original charge was reduced) that his earlier plea of guilty to second degree murder and sentence to life imprisonment was set aside. After numerous delays on the part of both the defense and the State, the defendant was before this Court seeking release based on expiration of time period for retrial. The State is preparing a writ application to the United States Supreme Court seeking clarification of what acts are interruptions beyond the control of the State and would cause the limitations period to be suspended or to run anew.

The State submits its arguments regarding the jurisdiction issue after the first degree murder charge was reduced pur-

suant to a plea bargain does not preclude prosecution. The total amount of time that elapsed covering delays that were beyond the control of the State, in addition, still permits prosecution. For example, a sanity commission examination delayed prosecution as did delays for recusal of the judge, transfer of the case and various writ applications. Particularly, on February 13, 1981 this Court ordered Walgamotte to stand trial for First Degree Murder (Docket # 80-K-1488).

The State is arguing there were interruptions for reasons beyond the control of the State, C.Cr.P. art. 579; there were innumerable suspensions of time limitations under C.Cr.P. art. 580; and that where *other dilatory pleas obtained by the defendant - - including numerous repetitive writ applications*, the period of limitation has in fact been interrupted. *While the writ applications were being processed, it was impossible for the State to have brought Walgamotte to trial.* C.Cr.P. art. 579 (2). Walgamotte himself (pro se) and through counsel, accounted for approximately two years of delays by virtue of filing writ applications. The State was denied access to Walgamotte, denied obtaining his presence by legal process at a trial by reason of these writ applications.

Under *Moore vs. Arizona*, 414 U.S. 25, 38 L. Ed. 2d 183, 94 S. Ct. 188 (1973), the United States Supreme Court expressed the unanimous view that an affirmative demonstration of prejudice to the accused was not essential to prove a denial of his constitutional right to a speedy trial, and that case was remanded for reassessment under proper constitutional standards.

In *Kloper vs. North Carolina*, 386 U.S. 213 (1967) the United States Supreme Court held this issue presents a federal query under the 14th Amendment to the United States Constitution.

FOR THE FOREGOING REASONS, the State seeks a stay of this Court's Mandate dated July 2, 1982 pending application for a writ to the United States Supreme Court.

Respectfully submitted,

HARRY MOREL, DISTRICT ATTORNEY
29TH JUDICIAL DISTRICT
PARISH OF ST. JOHN THE BAPTIST
STATE OF LOUISIANA

/s/ Abbott J. Reeves,
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been served on Counsel for all parties by depositing same in the U.S. mails this 6 day of July, 1982.

/s/ Abbott J. Reeves
ABBOTT J. REEVES

ORDER

CONSIDERING THE FOREGOING MOTION, and reasons set forth therein, a stay of mandate is hereby granted until the 4th day of September, 1982 in the above-captioned matter.

New Orleans, Louisiana this 6th day of July, 1982.

/s/ Pascal F. Calogero, Jr.
Associate Justice

SUPREME COURT OF LOUISIANA
A TRUE COPY

/s/ Dan B. Haggerty, Jr.
Dan B. Haggerty, Jr.
Deputy Clerk